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[Before POLLOCK, C. B., WIGHTMAN and WILLIAMS, Js., CHANNELL, B., and MELLOR, J.]

REGINA vs. EDWARD GARDNER. *November 15 and 22, 1862.*¹

One who, in expectation of a reward, withholds from the owner, whom he knows, a lost check received by him from the finder, is not guilty of stealing the check.

Case reserved at the Middlesex sessions.

Edward Gardner was tried on an indictment charging him in the first count with stealing one banker's check and valuable security for the payment of 82*l.* 19*s.*, and of the value of 82*l.* 19*s.*, and one piece of stamped paper of the property of James Goldsmith.

In the second count the property was stated to be the property of Thomas Boucher.

It appeared from the evidence of Thomas Boucher, a lad of fourteen, that he found the check in question; that having met the prisoner Gardner, in whose service he had formerly been, he showed it to him; that the prisoner (Thomas Boucher being unable to read) told him it was only an old check of the Royal British Bank; that he wished to show it to a friend, and so kept the check; that Boucher very shortly after on the same day went to prisoner's shop and asked for the check; that the prisoner from time to time made various excuses for not giving up the check, and that Boucher never again saw the check.

It also appeared that the prisoner had an interview with Goldsmith, in which he said that he knew the check was Goldsmith's, asked what reward was offered, and upon being told 5*s.*, said he would rather light his pipe with it than take 5*s.*

The check has never been received either by Goldsmith or Boucher, though there was some evidence (not satisfactory) by prisoner's brother of its having been enclosed in an envelope and put under the door of Goldsmith's shop.

The jury found that "the prisoner took the check from Thomas

¹ 7 Law Times, N. S. 471.

Boucher in the hopes of getting the reward, and, if that is larceny, we find him guilty."

Thereupon the judge directed a verdict of guilty to be entered, and reserved for the opinion of this Court whether upon the above finding the prisoner was properly convicted.

November 15.—*Best* (with him *Besley*), for the prisoner, argued that the finding of the jury disproved the felonious intent. In *Reg. vs. York*, 3 Cox Crim. Cas. 181, a similar finding of the jury was held to amount to "not guilty." (He was then stopped.)

Kemp, for the prosecution.—The defendant could read, and therefore must have known the owner: *Reg. vs. Christopher*, 8 Cox Crim. Cas. 91; 28 L. J. 35, M. C.; *Reg. vs. Moore*, 8 Cox Crim. Cas. 416; 30 L. J. 77, M. C. As against all the world but the true owner, the boy Boucher was the owner, and the prisoner took the check from him against his will, and may be convicted on the second count.

POLLOCK, C. B.—That is the case of *Armory vs. Delamirie*, 4 Str. 505, where the boy was held entitled to sue the master for a jewel which he had found and his master had taken from him. It was not supposed that the master was guilty of felony. There the jewel was not ear-marked; but every one who can read can tell to whom a check belongs. Properly speaking a check is not a chattel. We must take it that the check was stamped, and being stamped it was not a piece of paper—it was a check.

Cur. adv. vult.

November 22.—*POLLOCK, C. B.*—In this case the prisoner was convicted of stealing a check. He took the check away from a boy who found it, and did not immediately give information to the owner, but withheld it in the expectation of getting a reward. The taking of the check from the finder was not a felonious taking, and the merely withholding it in the expectation of a reward was not larceny.

The rest of the Court concurring,

Conviction quashed.